

Serial No. 09/809,107

REMARKS

In accordance with the foregoing, the specification and claims 11 and 15 have been amended. Claims 24 and 25 have been added. Claims 1-20, 22 and 24-25 are pending and under consideration.

REJECTION UNDER 35 U.S.C. § 102:

Claims 1, 10, 14 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ito et al. (US 5,315,402).

The Office Action sets forth that in Ito et al. "a linear velocity detector (see linear velocity detect detecting means 28) that detects a linear velocity using a velocity of a spot of the light."

By way of review, Ito et al. discloses "A recording section 21b of the video signal recording/reproducing device of the present embodiment, like the recording section 21a of the previous embodiment, is essentially composed of the frequency modulating means 23, laser driving pulse generating means 24b, the recording means 25 and the driving means 26, as illustrated in FIG. 13. However, unlike in the first embodiment, the laser driving pulse generating means 24b and the driving means 26 are each connected with linear velocity detecting means 28. The linear velocity detecting means 28 detects the linear velocity of the magneto-optical disk 27' based on the radius of the part of the magneto-optical disk 27' being recorded (hereinafter referred to as recording radius). (col. 8, line 61- col. 9, line 6). However, claim 1 recites "a linear velocity detector that detects a linear velocity using a velocity of a spot of the light, which records the information on a surface of the optical disc, in a tangential direction of a circumference of the optical disc."

As noted above, Ito et al. discloses linear velocity detection means 28 which detects the linear velocity of the magneto-optical disk 27' based on the radius of the part of the magneto-optical disk 27'. As mentioned in the previous response, Ito et al. fails to disclose "a linear velocity detector that detects a linear velocity using a velocity of a spot of the light, which records the information on a surface of the optical disc, in a tangential direction of a circumference of the optical disc" as recited in claim 1.

As a general matter, "Anticipation requires the presence in a single prior art reference the disclosure of each and every element of the claimed invention, arranged as in the claim. Lindemann Maschinenfabrik GMBH v. American Hoise and Derrick Co., 221 USPQ 481, 485

Serial No. 09/809,107

(Fed. Cir 1984). The Patent Office has the burden of making out a prima facie case, which requires it to produce the factual basis for its rejection in an application under §§102 and 103. In re Warner, 154 USPQ 173, 177 (CCPA 1967).

Therefore, for at least the above, it is respectfully requested that this rejection of independent claim 1 be withdrawn and independent claim 1 be allowed.

FAILURE TO RESPOND TO APPLICANT'S ARGUMENTS:

On page 4 of Office Action, at Response to Arguments, the Examiner sets forth that "...to detect velocity of optical disc by using a velocity of a spot of light features" recited in claim 1 is not disclosed in the specification."

However, claim 1 recites "a linear velocity detector that detects a linear velocity using a velocity of a spot of the light, which records the information on a surface of the optical disc, in a tangential direction of a circumference of the optical disc" but does not recite "...to detect velocity of optical disc by using a velocity of a spot of light features" as argued by the examiner.

Furthermore, the Office Action sets forth that "In the specification at page 4, paragraph [0016], it discloses that "... Here, the linear velocity of the optical disc is defined as a velocity of a spot of the laser beam irradiated by the laser diode 2"; Accordingly, the limitation "detects velocity of optical disc by using a velocity of a spot of light features" is also disclosed by Ito et al. by detecting the linear velocity of the disc. Clearly, Ito et al. show all the features of the claimed invention."

The Examiner has directly incorporated the Examiner's previous arguments from the Office Action mailed November 04, 2004, but has not addressed in any apparent form the arguments presented in the Amendment of April 4, 2005. Indeed, the Amendment filed on April 4, 2005 is not referenced at page 4 of the Office Action. Instead the Examiner refers to arguments filed July 6, 2004. As such, there is no apparent argument which supports the Examiner's continued rejection of the claims in view of the applicant's traversal and which either clarifies the Examiner's position or otherwise advances prosecution. Further, as the Examiner has not utilized new arguments or combinations, there is no new rejection as asserted by the Examiner on page 2 of the Office Action. As such, the Examiner has not rebutted the arguments presented by the applicant in the Amendment of April 04, 2005.

As noted in at least MPEP 707.07(f), the Examiner is required to answer and address all traversals. This requirement is in addition to any repetition of a previously held position and is required to allow the applicant a chance to review the Examiner's position as to these arguments and to clarify the record for appeal. Additionally and as further noted in MPEP 707.07(f), a

Serial No. 09/809,107

failure of the Examiner to address the applicant's traversals can be deemed a failure to rebut these arguments so as to admit that the arguments have overcome the rejection. At the very least, the failure to address the applicant's traversals would render the Examiner's decision to again reject the claims arbitrary and capricious and invalid under the Administrative Procedures Act, 5 U.S.C. § 706, the standard under which such rejections are reviewed in view of Dickinson v. Zurko, 527 U.S. 150, 50 USPQ2d 1930 (1999).

As such, since the Examiner has not addressed the applicant's traversals presented in the Amendment of April 4, 2005, it is respectfully requested that the Examiner withdraw the Final Office Action and issue a new non-final Office Action addressing the Amendment of April 4, 2005. Therefore, it is respectfully requested that the Examiner both withdraw the finality of the Office Action mailed July 18, 2000, and issue a corrected non-Final Office Action. See, MPEP 706.07(d).

NEW CLAIMS 24 and 25:

New claims 24 recites:

- a controller which maintains the optical disc at a constant speed by controlling a number of rotations per a unit of time;
- a linear velocity detector that detects a linear velocity using a wobble signal; and
- an optical power controller that controls the writing laser beam to write information to the optical disc based on the linear velocity.

New claim 25 recites:

- a linear velocity from using wobble signal; and
- controlling the optical power of the light, to record the information to the optical disc based on the linear velocity
- wherein the linear velocity detecting further comprises:
 - detecting the linear velocity using a least one information track of the optical disc and outputting a frequency; and
 - converting the frequency into a voltage related to the frequency.

CONCLUSION:

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Serial No. 09/809,107

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

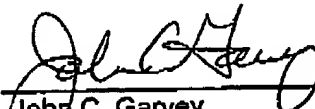
Respectfully submitted,

STAAS & HALSEY LLP

Date:

9-7-05

By:


John C. Garvey
Registration No. 28,607

1201 New York Avenue, NW, Suite 700
Washington, D.C. 20005
Telephone: (202) 434-1500
Facsimile: (202) 434-1501

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted via facsimile to: Commissioner for Patents
P.O. Box 1450 Alexandria, VA 22313-1450
on Sept 7, 2005
STAAS & HALSEY
By: Rebecca S. Ng
Date: 9/7/05